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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

gg DEPUTY

9  
10 Attorney for Defendant  
11 Law Offices of Robert B. Serian

12  
13  
14 UNITED STATES DISTRICT COURT  
15 SOUTHERN DISTRICT OF CALIFORNIA

16 *VIA FAX*

17 HEATHER ROWELL, NO. 09 CV 1770 JM (RBB)  
18 Plaintiff, ANSWER OF LAW OFFICES  
19 v. OF ROBERT B. SERIAN  
20 LAW OFFICES OF ROBERT B. SERIAN, Jury Trial Demanded  
21 Defendants.

22 Defendant LAW OFFICES OF ROBERT B. SERIAN answers the  
23 complaint on file herein as follows:

24 INTRODUCTION

25 1  
26 2. In answering Paragraph 1 of the Complaint, Defendant  
27 avers that the contents of the Fair Debt Collection Practices  
28 Act, 15 U.S.C. § 1692 et seq.. are self explanatory. Except as  
ROWELL V. LAW OFFICES OF ROBERT B. SERIAN  
ANSWER TO COMPLAINT Case No. 09 CV 1770 JM (RBB)

1 herein admitted, the remaining allegations of Paragraph 1 are  
2 denied.

3       2. In answering Paragraph 3 of the Complaint, defendant is  
4 without sufficient knowledge or information to form a belief as  
5 to the truth of the allegations contained in said paragraph, and  
6 on that basis denies each and every allegation contained therein.

7       3. In answering Paragraph 3 of the Complaint, Defendant  
8 admits that Plaintiff brought this lawsuit against the Law  
9 Offices of Robert B. Serian. Except as herein admitted, the  
10 remaining allegations of Paragraph 3 are denied.

11       4. In answering Paragraph 4 of the Complaint, defendant is  
12 without sufficient knowledge or information to form a belief as  
13 to the truth of the allegations contained in said paragraph, and  
14 on that basis denies each and every allegation contained therein.

15       5. In answering Paragraph 5 of the Complaint, to the extent  
16 that said paragraph alleges there were violations, defendant  
17 denies said allegations. With respect to the remaining  
18 allegations in Paragraph 5 of the complaint, defendant is  
19 without sufficient knowledge or information to form a belief as  
20 to the truth of the allegations contained in said paragraph, and  
21 on that basis denies each and every allegation contained therein.

22       6. In answering Paragraph 6 of the Complaint, Defendant  
23 admits that Plaintiff makes certain allegations, but denies the  
24 truth of said allegations. Except as herein admitted, the

1 remaining allegations of Paragraph 6 are denied.  
2  
3

3 JURISDICTION AND VENUE

4 7. In answering Paragraph 7 of the Complaint, defendant is  
5 without sufficient knowledge or information to form a belief as  
6 to the truth of the allegations contained in said paragraph, and  
7 on that basis denies each and every allegation contained therein.

8 8. In answering Paragraph 8, defendant denies that it  
9 violated the Fair Debt Collection Practices Act, 15 U.S.C. §§  
10 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection  
11 Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

12 9. In answering Paragraph 9, defendant admits that it does  
13 business within the State of California. Except as herein  
14 admitted, defendant is without sufficient knowledge or  
15 information to form a belief as to the truth of the allegations  
16 contained in said paragraph, and on that basis denies each and  
17 every allegation contained therein.

18 10. In answering Paragraph 10 of the Complaint, defendant is  
19 without sufficient knowledge or information to form a belief as  
20 to the truth of the allegations contained in said paragraph, and  
21 on that basis denies each and every allegation contained therein.  
22

23 THE PARTIES

24 11. In answering Paragraph 11, defendant admits that  
25  
26

1 plaintiff is a natural person. Except as herein admitted,  
2 defendant is without sufficient knowledge or information to form  
3 a belief as to the truth of the allegations contained in said  
4 paragraph, and on that basis denies each and every allegation  
5 contained therein.

6       12. Defendant admits the allegations contained in Paragraph  
7 12.

8       13. In answering Paragraph 13, defendant lacks sufficient  
9 knowledge to form a belief as to whether Plaintiff's financial  
10 obligation was incurred primarily for personal, family or  
11 household purposes and therefore can neither admit nor deny  
12 whether Plaintiff qualifies as a "consumer" as defined by 15  
13 U.S.C. § 1692a(3) or as a "debtor" as defined by Cal. Civ. Code §  
14 1788.2(h) and on that basis, denies the allegations. Except as  
15 herein admitted, the remaining allegations of Paragraph 3 are  
16 denied.

17      14. Defendant admits the allegations contained in Paragraph  
18 14.

19      15. In answering Paragraph 15, defendant admits that  
20 plaintiff is a natural person. Except as herein admitted,  
21 defendant lacks sufficient knowledge to form a belief as to  
22 whether Plaintiff's financial obligation was incurred primarily  
23 for personal, family or household purposes and therefore can  
24 neither admit nor deny whether Plaintiff qualifies as a

1 "consumer" as defined by 15 U.S.C. § 1692a(3) or as a "debtor" as  
2 defined by Cal. Civ. Code § 1788.2(h) and on that basis, denies  
3 the allegations. Except as herein admitted, the remaining  
4 allegations of Paragraph 3 are denied.

5           16. Defendant denies the allegations contained in Paragraph  
6 16.

7           17. Defendant admits the allegations contained in Paragraph  
8 17.

## FACTUAL ALLEGATIONS

11       18. In answering Paragraph 18 of the Complaint, defendant is  
12 without sufficient knowledge or information to form a belief as  
13 to the truth of the allegations contained in said paragraph, and  
14 on that basis denies each and every allegation contained therein.

15           19. Defendant admits the allegations contained in Paragraph  
16       19.

17       20. In answering Paragraph 20 of the Complaint, the  
18 allegations are vague and ambiguous and defendant is without  
19 sufficient knowledge or information to form a belief as to the  
20 truth of the allegations contained in said paragraph, and on that  
21 basis denies each and every allegation contained therein.

22        21. In answering Paragraph 21 of the Complaint, defendant  
23 lacks sufficient knowledge to form a belief as to whether  
24 Plaintiff's financial obligation was incurred primarily for

1 personal, family or household purposes and therefore can neither  
2 admit nor deny whether it qualifies as a "debt" as defined by 15  
3 U.S.C. § 1692a(5) or as a "consumer debt" as defined by Cal. Civ.  
4 Code § 1788.2(f).

5       22. In answering Paragraph 22 of the Complaint, defendant  
6 lacks sufficient knowledge to form a belief as to whether  
7 Plaintiff's financial obligation was incurred primarily for  
8 personal, family or household purposes and therefore can neither  
9 admit nor deny whether it qualifies as a "debt" as defined by 15  
10 U.S.C. § 1692a(5) or as a "consumer debt" as defined by Cal. Civ.  
11 Code § 1788.2(f).

12        23. In answering Paragraph 23 of the Complaint, the  
13 allegations are vague and ambiguous and defendant is without  
14 sufficient knowledge or information to form a belief as to the  
15 truth of the allegations contained in said paragraph, and on that  
16 basis denies each and every allegation contained therein.

17       24. In answering Paragraph 24 of the Complaint, Defendant  
18 admits that it was assigned to collect a specific debt allegedly  
19 owed by plaintiff. Except as herein admitted, the remaining  
20 allegations of Paragraph 24 are denied.

21        25. In answering Paragraph 25 of the Complaint, Defendant  
22 admits that it contacted Plaintiff in an attempt to collect a  
23 specific financial obligation at issue within one year preceding  
24 the filing of the Complaint. Except as herein admitted, the

1 remaining allegations of Paragraph 25 are denied.

2       26. In answering Paragraph 26 of the Complaint, Defendant  
3 admits that it contacted Plaintiff in an attempt to collect the  
4 financial obligation at issue. Except as herein admitted, the  
5 remaining allegations of Paragraph 26 are denied.

6       27. In answering Paragraph 27 of the Complaint, Defendant  
7 admits that it contacted Plaintiff in an attempt to collect the  
8 financial obligation at issue. Except as herein admitted, the  
9 remaining allegations of Paragraph 27 are denied.

10      28. Defendant denies the allegations contained in Paragraph  
11 28.

12      29. In answering Paragraph 29 of the Complaint, Defendant  
13 admits that it contacted Plaintiff on several occasions in an  
14 attempt to collect the financial obligation at issue. Except as  
15 herein admitted, the remaining allegations of Paragraph 29 are  
16 denied.

17      30. Defendant denies the allegations contained in Paragraph  
18 30.

19      31. Defendant denies the allegations contained in Paragraph  
20 31.

21      32. Defendant denies the allegations contained in Paragraph  
22 32.

23      33. Defendant denies the allegations contained in Paragraph  
24 33.

25

26

34 Defendant denies the allegations contained in Paragraph

34.

35. Defendant denies the allegations contained in Paragraph

35.

36. Defendant denies the allegations contained in Paragraph

36.

37. In answering Paragraph 37 of the Complaint, Defendant

denies that it spoke with an administrative assistant by posing as a patient. As to the remaining allegations in said Paragraph, defendant lacks sufficient knowledge to form a belief as to the matters alleged and therefore can neither admit nor deny.

38. Defendant denies the allegations contained in Paragraph

38.

39. In answering Paragraph 39 of the Complaint, Defendant

denies that it made incessant phone calls to Plaintiff's place of employment. As to the remaining allegations in said Paragraph, defendant lacks sufficient knowledge to form a belief as to the matters alleged and therefore can neither admit nor deny.

40. Defendant denies the allegations contained in Paragraph

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41 Defendant denies the allegations contained in Paragraph

41

42. Defendant denies the allegations contained in Paragraph

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1       43. Defendant denies the allegations contained in Paragraph  
2       43.

3       44. Defendant denies the allegations contained in Paragraph  
4       44.

5       45. Defendant denies the allegations contained in Paragraph  
6       45.

7       46. Defendant denies the allegations contained in Paragraph  
8       46.

9       47. Defendant admits the allegations contained in Paragraph  
10      47.

11       48. In answering Paragraph 48 of the Complaint, Defendant  
12      admits that it requested a dismissal of the state action. Except  
13      as herein admitted, the remaining allegations of Paragraph 48 are  
14      denied.

15  
16                          COUNT I

17       49. Answering Paragraph 49 of the Complaint, defendant  
18      incorporates herein by reference, as if set forth in full,  
19      defendant's answers to Paragraphs 1 through 48, inclusive as set  
20      forth above.

21       50. Defendant denies the allegations contained in Paragraph  
22      50.

23       51. Defendant denies the allegations contained in Paragraph  
24      51.

1                   COUNT II

2       52. Answering Paragraph 52 of the Complaint, defendant  
3 incorporates herein by reference, as if set forth in full, their  
4 answers to Paragraphs 1 through 51, inclusive as set forth above.

5       53. Defendant denies the allegations contained in Paragraph  
6 53.

7       54. Defendant denies the allegations contained in Paragraph  
8 54.

9                   AFFIRMATIVE DEFENSES

10                  **FIRST AFFIRMATIVE DEFENSE**

11                  **(Failure to State a Claim)**

12       The allegations of the Complaint fail to state a claim  
13 against Defendant upon which relief can be granted.

15                  **SECOND AFFIRMATIVE DEFENSE**

16                  **(Statute of Limitations/Laches)**

17       The purported claims set forth in the Complaint are barred  
18 in whole or in part by the applicable statutes of limitation  
19 and/or the equitable doctrine of laches.

21                  **THIRD AFFIRMATIVE DEFENSE**

22                  **(Bona Fide Error)**

23       To the extent that any violation of law occurred, which  
24 Defendant expressly denies, said violation was not intentional

1 and resulted from a bona fide error notwithstanding the  
2 maintenance by Defendant of procedures reasonably adapted to  
3 avoid any such error.

4

5 **FOURTH AFFIRMATIVE DEFENSE**

6 **(Unclean Hands)**

7 The allegations in the Complaint and relief requested are on  
8 information and belief barred in whole or in part by the doctrine  
9 of unclean hands.

10

11 **FIFTH AFFIRMATIVE DEFENSE**

12 **(No Wilful Conduct)**

13 Defendant acted in good faith at all times in its dealings  
14 with Plaintiff, and if any conduct by Defendant is found to be  
15 unlawful, which Defendant expressly denies, such conduct was not  
16 willful and should not give rise to liability.

17

18 **SIXTH AFFIRMATIVE DEFENSE**

19 **(Failure to Mitigate)**

20 Plaintiff, although under a legal obligation to do so, has  
21 failed to take reasonable steps to mitigate any alleged damages  
22 that she may have and is therefore barred from recovering  
23 damages, if any, from Defendant.

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28

1                   **SEVENTH AFFIRMATIVE DEFENSE**

2                   **(Waiver)**

3       Plaintiff has waived her rights, if any, to recover the  
4       relief she seeks in the Complaint based upon her own conduct and  
5       admissions with respect to the financial obligation at issue.

6

7                   **EIGHTH AFFIRMATIVE DEFENSE**

8                   **(Good Faith)**

9       Defendant has, at all material times with respect to  
10 Plaintiff, acted in good faith in an effort to comply fully with  
11 all relevant federal and state laws.

12

13                  **NINTH AFFIRMATIVE DEFENSE**

14                  **(Apportionment)**

15       Without admitting that any damages exist, if damages were  
16 suffered by Plaintiff as alleged in the Complaint, those damages  
17 were proximately caused by and contributed by persons other than  
18 Defendant. The liability, if any exists, of Defendant and/or any  
19 responsible parties, named or unnamed, should be apportioned  
20 according to their relative degrees of fault, and the liability  
21 of Defendant should be reduced accordingly.

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27       ROWELL V. LAW OFFICES OF ROBERT B. SERIAN  
28       ANSWER TO COMPLAINT

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1                   **TENTH AFFIRMATIVE DEFENSE**

2                   **(Supervening Cause)**

3                 The causes of action in the Complaint are barred, in whole  
4 or in part, to the extent that any injury or loss sustained was  
5 caused by intervening or supervening events over which Defendant  
6 had or has no control.

7

8                   **ELEVENTH AFFIRMATIVE DEFENSE**

9                   **(Equitable Indemnity)**

10          To the extent that Plaintiff has suffered any damage as a  
11 result of any alleged act or omission of Defendant, which  
12 Defendant denies, Defendant is entitled to equitable indemnity  
13 according to comparative fault from other persons and/or entities  
14 causing or contributing to such damages, if any.

15

16                   **TWELFTH AFFIRMATIVE DEFENSE**

17                   **(Litigation Privilege)**

18          The actions of Defendant complained of in the Complaint  
19 constitute communications that were made in good faith and in  
20 anticipation of or in connection with ongoing litigation and  
21 Plaintiff's claims are therefore barred, in whole or in  
22 part, by the California litigation privilege and/or the *Noerr-*  
23 *Pennington Doctrine*.

24

25

26                   13

27          ROWELL V. LAW OFFICES OF ROBERT B. SERIAN  
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1                   **THIRTEENTH AFFIRMATIVE DEFENSE**

2                   **(Not a Debt Collector)**

3     Defendant, a law firm, is not a "debt collector" as defined  
4     by the California Rosenthal Fair Debt Collection Practices Act,  
5     Cal. Civ. Code § 1788 et seq.

6                   **FOURTEENTH AFFIRMATIVE DEFENSE**

7                   **(First Amendment)**

8     Defendant's conduct is protected under the First Amendment  
9     of the United States Constitution and the California  
10   Constitution. Plaintiffs' proposed interpretation of provisions  
11   of the FDCPA must be rejected as it would place an unreasonable  
12   restraint upon Defendant's First Amendment rights, thereby  
13   raising serious constitutional issues.

14                  **JURY DEMAND**

15  
16     Pursuant to Rule 38 of the Federal Rules of Civil Procedure,  
17     Plaintiff hereby requests a jury trial.

18  
19     WHEREFORE, Defendant requests judgment as follows:

- 20       1. That Plaintiff take nothing by the Complaint, which  
21       should be dismissed with prejudice.  
22  
23       2. That Defendant recover from Plaintiff costs according to  
24       proof.

1       3. That Defendant recover attorneys' fees according to  
2 proof.

3       4. That the Court orders such other further reasonable  
4 relief as the Court may deem just and proper.

5

6 Dated: December 7, 2009

  
STEVE NEIMAND  
Attorney for Defendant

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1 CERTIFICATION [FRCP Rule 11(b)]

2 I hereby certify that this Answer:

3 1. Is not being presented for an improper purpose, such as  
to harass or cause unnecessary delay or needless increase in the  
4 cost of litigation;

5 2. Is warranted by existing law or by non-frivolous argument  
for extension or modification or reversal of existing law; and

6 3. Has evidentiary support for all factual contentions or  
7 denials.

8 Dated: December 7, 2009

9   
10 STEVE WEIMAND  
11 Attorney for Defendant

1 PROOF OF SERVICE

2 I, the undersigned say: I am over the age of 18 years and not a party to the within action or  
3 proceeding. My business address is 4766 Park Granada, Suite 212, Calabasas, California.

4 On December 7, 2009, I served the within:

5 ANSWER

6 on the persons indicated below, by placing a true copy thereof enclosed in a sealed envelope with  
7 postage thereon fully prepaid in the United States mail at Calabasas, California, addressed as  
follows:

8 Tiffany G. Jensen, Esq.  
9 Joshua B. Swigart, Esq.  
Hyde & Swigart  
10 411 Camino Del Rio South  
Suite 301  
San Diego, CA 92108-3551

11 and by faxing a copy to: (619) 297-1022

12 I am readily familiar with the firm's practice of collection and processing of correspondence for  
mailing. Under that practice it would be deposited with U.S. Postal Service on that same day  
13 with postage thereon fully prepaid at Calabasas, California in the ordinary course of business. I  
14 am aware that on motion of the party served, service is presumed invalid if postal cancellation  
date or postage meter date is more than one day after date of deposit for mailing in affidavit.

15 I am employed in the office of a member of the bar of this Court at whose direction the service  
was made.

16 I declare under penalty of perjury that the foregoing is true and correct. Executed on December  
17 7, 2009 at Calabasas, California.

18   
19 KERRY ROSE